

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

60711

FILE: B-185306

DATE: April 5, 1976

MATTER OF: 3M Company

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## DIGEST:

Protester's allegation that agency should purchase requirements from Federal Supply Schedule (FSS) is rendered moot by agency decision to purchase from FSS contractor other than protester who was subsequently listed on multiple-award schedule.

On November 10, 1975, the 3M Company (3M) protested the purchase of a library detection system under Request for Quotations (RFQ) No. 6-36983, issued by the Department of Commerce on October 10, 1975. 3M claimed that any open-market purchase of a library detection system was improper because 3M had a library detection system listed on the Federal Supply Schedule (FSS).

The Department of Commerce reported that on November 6, 1975, the General Services Administration informed that Department that 3M had a library detection system on the FSS under the multiple-award schedule, FSC group 63, Special IRM No. 246-20, awarded on October 30, 1975. Federal Property Management Regulations § 101-26.401-1 provides that the Federal Supply Schedules are mandatory to the extent specified in each schedule. The 3M schedule contract stated in this regard:

### "Scope of Contract

- "(a) This solicitation provides for normal supply requirements of all departments and independent establishments, including wholly-owned Government corporations, in the executive branch of the Federal Government (except the Department of Defense and Department of Labor) and the Government of the District of Columbia, for delivery within the 48 contiguous States and Washington, D.C., and resultant contracts will be used as primary sources for the articles or services listed herein.

Multiple Awards:

- (a) The Government shall be obligated, in accordance with the 'Scope of Contract' clause of this contract, to order from the contractor under the contract resulting from this solicitation such of the products of the particular make, model, or brand, or such of the services, as may be required during the period of such contract.
  
- (b) The Government may make multiple awards to those responsible offerors whose offers, conforming to the solicitation for offers, will be most advantageous to the Government, taking into consideration the multiplicity and complexity of equipment of various manufacturers and the differences in performance required to accomplish or produce required end results, reasonableness of prices quoted, compliance with delivery requirements, and other pertinent factors. Offerors are advised that ordering agencies will be subject to the following instructions:

'Where orders are placed at other than the lowest delivered price available for the type of article or service required, the ordering agencies shall justify such orders as provided in the Federal Property Management Regulations (41 CFR 101-26.408).''

Since 3M was the only firm which had been awarded a FSS contract at that point, GSA notified the Department that it was mandatory that the Department use the 3M schedule contract.

In the meantime, five firms responded to the Department's RFQ on November 7, 1975. These quotations were submitted to the U.S. Patent Office, the ultimate user of the system, for evaluation on November 24, 1975. The Patent Office evaluation determined that a library detection system manufactured by Checkpoint Systems met the minimum requirements of the Patent Search Room. Purchase of the Checkpoint detection system was recommended. Since the Department of Commerce was proposing to purchase an item similar to the FSS item, the Department, pursuant to FPMR § 101-26-401-3(b), requested a waiver from the Federal Supply Service prior to making the open market procurement of the Checkpoint MK 11 System. On January 2, 1976, the

Federal Supply Service granted a waiver to the Department of Commerce so that an open market purchase of the detection system might be made. Award was not made, however, pending the resolution of this protest.

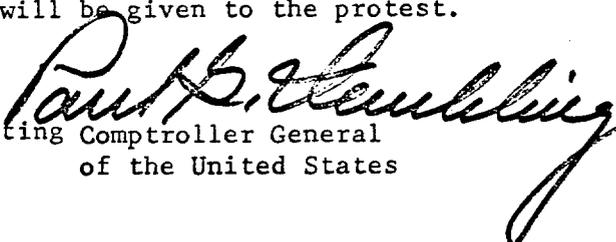
On or about January 8, 1976, GSA awarded a multiple-award schedule FSC Group 63, Item 246-20-1 covering Alarm and Signal Systems to Checkpoint Systems, the proposed awardee under RFQ No. 6-36983. Consequently, the Department of Commerce on January 12, 1976, canceled the RFQ in its entirety and notified offerors that:

"(t)he subject procurement will be procured by the U.S. Patent Office in accordance with FPMR 101-26.408-2 at the lowest price item under the GSA multiple-award schedule FSC Group 63 covering Alarm and Signal Systems."

Subsequently the purchase was made from Checkpoint Systems on January 14, 1976, since that firm offered the lowest delivered price under the multiple-award schedule.

By letter of January 12, 1976, 3M indicated to this Office that it would review these recent developments (which were pending at the time 3M wrote its letter) and would submit its "final position on this protest with GAO in the near future prior to final decision \* \* \*." However, the protester has not submitted any further comments on the matter.

Since 3M's original protest was directed against any open-market purchase of the system in question by the Government and since the system in fact was purchased under an FSS contract, we consider 3M's protest to be moot on this point. Consequently, no further consideration will be given to the protest.

  
Acting Comptroller General  
of the United States